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Bureau of Special Education FY'18 Memo #29

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To: Superintendents of Schools
Special Education Directors

From: Office of the Commissioner of Education

Division of Educational Improvement
Bureau of Special Education

RE: Extended School Year (ESY)

The Individuals with Disabilities Education Improvement Act of 2004 (IDEA), effective October 13, 2006, states that all students with disabilities are entitled to a free appropriate public education (FAPE). To have meaningful access to public education, students with disabilities may require services or types of educational programs that are different from those needed by other students since each student with a disability has unique learning needs. With this in mind, FAPE for some students with disabilities may require a program of special education and related services in excess of the regular school year.

In general, extended school year (ESY) refers to special education and/or related services provided by local school districts for the purpose of providing FAPE to a student with a disability. These services, at no cost to the parent, will vary in type, intensity, location, inclusion of services, and length of time depending on the needs of the student, and must be provided in the least restrictive environment by qualified individuals. ESY services are necessary to provide FAPE if educational gains will be significantly jeopardized when school is not in session. Regression or lack of recoupment, in addition to other factors, while school is not in session may be evidence that FAPE is not being provided. In other words, it is not the case that a student will benefit from ESY services, but that the student will not receive FAPE if ESY services are not provided.

The IEP must state the need for the provision of ESY services in order for the student to receive FAPE. Determining ESY services is not a separate planning process since it is part of the IEP process. Thus, as part of the IEP meeting, held at least annually, team members must consider if a student needs ESY services. If done as a separate planning process, it may lead to the segmentation of services and further leads to situations where services are considered open to discussion for some students, but not for all. Therefore, a separate IEP should not be developed for ESY services; the current or an amended IEP should be used.

Because ESY services are uniquely designed to provide FAPE to students with disabilities, it is necessary to emphasize that these services are the following:

- Not based on the category of student's disability – services must be based on the student's unique educational needs;
- Not limited to summer months;
- Not mandated twelve-month services for all students with disabilities;
- Not a child care service;
- Not required to be provided each day and/or all hours of the school day;
- Not an automatic program provision from year to year;
- Not regular education summer school, compensatory services, or enrichment programs;
- Not required to be provided in a traditional classroom setting;
- Not a predetermined program design; and
- Not a service to be provided to maximize each student's potential.

Procedures used by local school districts to assist the IEP team in determining the need for ESY services must do the following:

- Prohibit the postponement of the decision by the IEP team regarding ESY services until after the summer in order to gather data or to determine what would happen if ESY services were not provided;
- Should allow the decision by the IEP team regarding ESY services to be made early enough to ensure that the parents can exercise their due process rights;
- Not pre-limit the ESY services to a set number of days, hours of service;
- Not restrict the provision of ESY services for administrative convenience;
- Not allow the availability of ESY services to be limited by the financial resources of the local school district; and
- Not limit ESY services to predetermined disability categories nor categorically exclude certain students with disabilities.

Listed below are factors to be considered by the IEP team to assess the need for ESY services.

- *Critical Skills*: A critical skill includes any skill determined by the IEP team to be critical to the student's overall educational progress, including academic, social and behavior, independent living, communication, fine and large motor skills, as well as other identified skills pertinent to receiving FAPE.
- *Degree of Progress*: The IEP team must review the expected degree of progress on IEP goals targeting critical skills and determine whether the student's slow rate or lack of progress is likely to prevent the student from educational benefit during the school year without ESY services.
- *Emerging Skills/Breakthrough Opportunities*: The IEP team determines whether IEP goals targeting critical skills are at a breakthrough point. At this point, the IEP team determines whether the interruption of instruction caused by a school break is likely to prevent the student from educational benefit without ESY services.
- *Regression*: The IEP team can consider regression which is a substantial loss of any critical skill and reverting back to a performance level than what was previously obtained after a school break without ESY services.
- *Recoupment (Recovery)*: The IEP team can consider lack of recoupment which is the inability to recover a loss of critical skills in a reasonable time following a school break without ESY services. Most students without disabilities recoup skills within a few days after short breaks or a few weeks after longer breaks such as over the summer.

- *Nature and/or Severity of the Disability:* The IEP team can consider if the nature and/or severity of the student's disability is likely to prevent the student from educational benefit during the school year without ESY services.
- *Special Circumstances or Other Factors:* The IEP team can consider special circumstances that will prevent the student from educational benefit during the school year without ESY services such as ability of the student to interact with students without disabilities and transition needs.

In determining the need for ESY services, the following discussion questions may help the IEP team:

- Does the student need extensive review to demonstrate previously learned skills?
- What inconsistencies does the student demonstrate in mastered or partially acquired skills after a break in services?
- Has the student reached a critical point of instruction or behavior management where a break in services would have serious, detrimental effects?
- Does the student demonstrate behaviors or critical skill deficits that would cause regression if breaks in programming occur?
- Is there a degenerative medical condition that might cause regression?
- Will a break in programming jeopardize the student's placement in the least restrictive environment?

If ESY services are determined necessary for the student to receive FAPE and educational benefit during the regular school year, then they must be provided. To demonstrate evidence for the need of ESY services, the following types of information can be reviewed:

- historical data;
- review of progress or previously demonstrated mastery of IEP goals over time;
- data on the rates and inconsistencies of both learning and relearning information and skills using standardized tests, samples of student work, and curriculum-based assessments including pre and post tests before and after school breaks;
- documented clinical evidence;
- multiple observations from teachers, therapists, parents, and others having direct contact with the student who can interpret instructional implications;
- behavior or skill-based logs;
- attendance information;
- expert opinions; and
- other objective evidence.

To summarize, ESY decisions are driven by student need based upon data to substantiate that FAPE would not be provided without the services. Regression and recoupment are not the only factors to determine the need for ESY. When proposing ESY, school districts must consider how to meet the individual needs of the student which may not be met in an existing special education program. The requirements relevant to the provision of special education services such as written prior notice to parents and consideration for least restrictive environment must be followed when IEP teams consider ESY.

If you would like further clarification or have questions regarding ESY services for students with disabilities, please contact Joanne DeBello at Joanne.DeBello@doe.nh.gov or (603) 271-4776.